

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: ANDROGEL ANTITRUST
LITIGATION (NO. II)

MDL DOCKET NO. 2084
ALL CASES

1:09-MD-2084-TWT

ROCHESTER DRUG
CO-OPERATIVE INC., on behalf of
itself and all others similarly situated,

Plaintiff,

v.

UNIMED PHARMACEUTICALS
INC., et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:09-CV-956-TWT

ORDER

This is a Multidistrict Litigation proceeding involving antitrust actions that are consolidated for pretrial proceedings. On February 22, 2010, the Court dismissed all claims except the sham litigation claims asserted by the Direct Purchasers. [MDL Doc. 50]. Defendants Par Pharmaceutical Companies, Inc. and Paddock Laboratories, Inc. now move for clarification to determine whether any sham litigation claim by the Direct Purchasers against the generic manufacturers remains.

In Schering-Plough Corp. v. F.T.C., 402 F.3d 1056 (11th Cir. 2005) , the Eleventh Circuit seemed to indicate that reverse payment patent infringement settlements may restrain trade if they are made in the context of sham litigation. See id. at 1068. Here, the Direct Purchasers alleged that the patent infringement litigation was a sham and that the generic Defendants knew or should have known that Solvay would not succeed on the merits. (Sec. Am. Compl. ¶ 107.) These allegations, coupled with the allegation in Count I that the generic Defendants conspired to restrain trade, are sufficient to survive the Defendants' Motions to Dismiss. Therefore, the Direct Purchasers' claim that the generic Defendants restrained or conspired to restrain trade by entering into settlements of the sham litigation in exchange for a portion of Solvay's monopoly profits remains.

SO ORDERED, this 16 day of September, 2010.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge